

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

PHILLIP BRANDON SHIVAR,

Petitioner,

v.

CIVIL ACTION NO. 5:08-cv-01141

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM OPINION AND ORDER  
ADOPTING PROPOSED FINDING AND RECOMMENDATION**

The Court has reviewed the Petitioner's October 3, 2008 *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody* (Document 1), brought on the grounds, *inter alia*, that "the District Court has mistakenly violated the United States Code when delegating its exclusive authority to set the amount of timing of Shivar's fine payments to the BOP and/or U.S. Probation Officer upon his release, without retaining ultimate authority over such decisions."<sup>1</sup>

By *Standing Order* (Document 2) entered on October 3, 2008, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On January 6, 2012, the Magistrate Judge submitted *Proposed Findings and Recommendation* (Document 4), wherein it is recommended that this Court dismiss Petitioner's Application Under

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<sup>1</sup> Petitioner's original filing, "Motion Seeking U.S. District Court Clarification and Order Regarding Court Imposed Fine During Petitioner's Sentencing Hearing" was recharacterized by the Eastern District of North Carolina as a writ of habeas corpus pursuant to 28 U.S. C. § 2241. (Document 1)


28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody and remove this matter from the Court's docket.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by January 23, 2012. To date, neither party has filed any objections to the *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Petitioner's Application under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in State or Federal Custody be **DISMISSED** and that this matter be **REMOVED** from the Court's docket.<sup>2</sup>

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record and any unrepresented party.

ENTER: January 27, 2012

  
IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA

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<sup>2</sup> The Court notes that Defendant has paid in full the \$1800 fine imposed by the sentencing court. (*See* Petition for Action on Supervised Release at 2, *United States v. Shivar*, Criminal No. 4:06-cr-030-FL-1 (E.D.N.C. Apr. 12, 2011), (No. 40)).